Volume 46 | Issue 3 Article 9

April 1940

Licenses--Landlord and Tenant--Effect of Oral License Without Consideration

W. J. C.
West Virginia University College of Law

RECENT CASE COMMENTS

LICENSES—LANDLORD AND TENANT—EFFECT OF ORAL LICENSE WITHOUT CONSIDERATION.—The owner of a business building by written lease demised a portion of it for a term of years to the lessee, and later without consideration gave verbal permission to the lessee to erect a sign on the outside of an exterior wall. The lessee while holding under the original lease and later under a renewal, neither of which made mention of the sign, continued to maintain the sign with the acquiescence of the owner of the building. *Held,* that the lessee's privilege to maintain the sign was revocable at the will of the lessor. *Liberal Clothing Co. v. Delson Realty Co.*[1]

As to licenses in West Virginia there are two lines of authority. One holds that a bare gratuitous license to do acts upon the land of the licensor need not be in writing because it is not within the Statute of Frauds.[2] It is freely revocable by any manifestation by the licensor of his will to that effect, regardless of the expenditures made by the licensee in reliance thereon.[3] Also, it is only a matter of defense. Thus, when *A* has a license to cross *B's* land, *A* can set this up as a defense to an action of trespass, but cannot use it as a basis for a cause of action for obstruction of the passage.[4]

The other line of authority holds that when a license is given for consideration, and large expenditures are made in reliance thereon, it is irrevocable in equity.[5] Though no easement is created by deed as is required by the Statute of Frauds, there is an implied contract for an easement specifically enforceable in equity,[6]

[1] 6 S. E. (2d) 236 (W. Va. 1939).

[2] Putman v. State, 132 N. Y. 344, 30 N. E. 743 (1892); Pifer v. Brown, 43 W. Va. 412, 27 S. E. 399, 49 L. R. A. 497 (1897); Montgomery v. Economy Fuel Co., 61 W. Va. 620, 57 S. E. 137 (1907); Salinger v. North American Woolen Mills Co., 70 W. Va. 151, 73 S. E. 312 (1911); Dickinson v. Foster, 81 W. Va. 739, 96 S. E. 196 (1918); Ramsey v. Reid, 83 W. Va. 197, 98 S. E. 155 (1919); CLARK, COVENANTS AND INTERESTS RUNNING WITH LAND (1929) 12.

[3] Wiseman v. Lucksinger, 84 N. Y. 31 (1881); Pifer v. Brown, 43 W. Va. 412, 27 S. E. 399 (1897); 1 WASHBURN, REAL PROPERTY (6th ed. 1902) 522, 523. *Contra*: Rerick v. Kern, 14 S. & R. 267, 16 Am. Dec. 497 (Pa. 1826).

[4] CLARK, *op. cit. supra* n. 2, at 18.

[5] Carpenter v. Stapleton, 169 Va. 22, 192 S. E. 792 (1937); Tufts v. Copen, 37 W. Va. 623, 16 S. E. 793 (1893); Brown v. Western Maryland Ry., 84 W. Va. 271, 99 S. E. 457 (1919); Sanford v. First City Co., 118 W. Va. 713, 192 S. E. 337 (1937).

[6] By this line of authority the case comes up in equity by a bill to enjoin revocation of the license; and probably by W. VA. CODE (Michie, 1937) c. 56, art. 5, § 5, which makes equitable defenses available at law, if the licensee is sued at law as in an action of trespass he can set up the right to enjoin revocation of the license as a matter of defense.

due to the consideration given for the license and the contemplated expenditures made in reliance thereon.[7] It is of greater dignity than a bare license and is regarded as an equitable easement.[8]

The court in the principal case properly held that there was a bare license to erect the sign and not a equitable easement, for otherwise the licensee would be getting something for nothing, as there is no showing that the rent was consideration for the contract to give the license. The question as to whether it is a bare license or an equitable easement is largely one of policy and is not based solely on logic.[9] There is no fraud in allowing one to make expenditures which the licensor has the right to assume are made in contemplation of the instability of the license.[10] To make the permission irrevocable there must be both a clear intent to create a permanent incorporeal interest and due formality.[11] There seems to be no injustice in placing the loss on a licensee who is careless enough to expend his money without getting an irrevocable legal right.[12]

W. J. C.

MINES AND MINERALS — MERGER OF COAL LEASE IN REVERSION TO MINERALS — HOUSES AS TRADE FIXTURES UNDER COAL LEASE. — *L*, owner of land and minerals, leased to *T* the underlying coal. *L's* title to the surface passed to *A* and *L's* ownership of the reversion in the coal passed to *B*. *T* meantime in the exercise of his mining rights, and in the use of his way of necessity, erected a large number of miner's houses. Later *T* became insolvent and ceased mining operations. The miner's houses were vacated and fell into serious disrepair. *B*, as mineral reversioner bought in *T's* outstanding mineral lease at a subsequent bankruptcy sale. Sometime later *A*, as surface owner, took possession of the houses, the way of necessity not being then in use, made extensive improvements and rented the houses to new occupants. *B* filed a bill for an accounting of the rentals. *Held*, that he as owner of the coal was not entitled to any share. *Millard v. Stepp.*[1]

---

[7] Carpenter v. Stapleton, 169 Va. 22, 192 S. E. 792 (1937); Sanford v. First City Co., 118 W. Va. 713, 192 S. E. 337 (1937).

[8] Carpenter v. Stapleton, Brown v. Western Maryland Ry., both *supra* n. 5.

[9] Pifer v. Brown, 43 W. Va. 412, 27 S. E. 399 (1897); CLARK, *op. cit. supra* n. 2, at 19.

[10] Note (1900) 49 L. R. A. 526.

[11] The mere fact a deed is used does not in and of itself create an easement. Lehigh & N. E. R. R. v. Bangor & P. Ry., 228 Pa. 350, 77 Atl. 552 (1910).

[12] Pifer v. Brown, 43 W. Va. 412, 27 S. E. 399 (1897).

---

[1] 5 S. E. (2d) 815 (W. Va. 1939).